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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110707371-2136-02]

RIN 0648-BB28

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; interim specifications; request for comment.

SUMMARY: NMFS is implementing final 2012 specifications and management measures for Atlantic mackerel (mackerel), and 2012-2014 specifications for Illex and longfin squid, and interim final 2012 specifications and management measures for butterfish. This is the first year that the specifications are being set for Atlantic mackerel and butterfish under the provisions of the Mid-Atlantic Fishery Management Council's (Council) Annual Catch Limit and Accountability Measure Omnibus Amendment. This action also adjusts the closure threshold for the commercial mackerel fishery to 95 percent (from 90 percent), and allows the use of jigging gear to target longfin squid if the longfin squid fishery is closed due to the butterfish mortality cap. Finally, this rule makes minor corrections in existing regulatory text to clarify the intent of the regulations. These specifications and management measures promote the utilization and conservation of the Atlantic Mackerel, Squid, and Butterfish (MSB) resource.

DATES: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER]. Public comments on the interim final butterfish specifications must be received no later than 5 p.m., eastern standard time, on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the butterfish specifications, identified by NOAA–NMFS–2011–0245, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NMFS-NOAA-2011-0245 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Fax: (978) 281-9135, Attn: Comments on 2012 Butterfish Specifications, NMFS-NOAA-2011-0245
- Mail and hand delivery: Daniel S. Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on 2012 Interim Butterfish Specifications, NOAA–NMFS–2011–0245.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying

Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the 2012 specifications document, including the Environmental Assessment (EA), is available from Daniel S. Morris, Acting Northeast Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from: Daniel S. Morris, Acting Regional Administrator, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930-2276, or via the internet at <http://www.nero.noaa.gov>. FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978-281-9195, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

Specifications, as referred to in this rule, are the combined suite of commercial and recreational catch levels established for one or more fishing years. The specification process also allows for the modification of a select number of management measures, such as closure thresholds, gear restrictions, and possession limits. The Council's process for establishing

specifications relies on provisions within the Fishery Management Plan (FMP) and its implementing regulations, as well as requirements established by the Magnuson-Stevens Act.

In developing these specifications, the Council considered the recommendations made by its Monitoring Committee and Scientific and Statistical Committee (SSC). Generally, the SSC recommends to the Council acceptable biological catch (ABC) levels that take into account scientific uncertainty regarding stock status and biological reference points, and the Council relies on that ABC recommendation to set other specifications. Here, in addition to specifications for each of the MSB species, the Council recommended adjusting the mackerel closure threshold, and adjusting gear requirements for the butterfish and longfin squid fisheries. The Council made its specification recommendations at its June 14-16, 2011, meeting in Port Jefferson, NY, and submitted these draft recommendations, along with the required analyses, for agency review on August 9, 2011, with final submission on September 15, 2011. A proposed rule for 2012 MSB specifications and management measures was published on October 26, 2011 (76 FR 66260), and the public comment period for the proposed rule ended on November 25, 2011. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

The structure of specifications for the mackerel and butterfish fisheries was revised by the Council's recently finalized regulations implementing its Annual Catch Limit and Accountability Measure Omnibus Amendment (Omnibus Amendment; 76 FR 60606, September 29, 2011), which established annual catch limit (ACL) and accountability measure (AM) provisions for all of the Council's FMPs. The ACL/AM requirements do not apply to the squid species because they have a life cycle of less than 1 year. Following the specification of ABC,

the revised regulations at § 648.22 require the specification of ACLs, which, if exceeded, require payback deductions from the subsequent year's catch limit. In order to reduce the chance of ACL overages, and the associated paybacks when ACLs are exceeded, the regulations also require NMFS to specify annual catch targets (ACTs) to provide a buffer for management uncertainty. Several specifications, including domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and joint venture processing for mackerel (JVP), were previously required in the implementing regulations for the FMP, and were unchanged by the Omnibus Amendment.

For mackerel, the Omnibus Amendment and Amendment 11 to the MSB FMP (76 FR 68642; November 7, 2011) created distinct allocations for the commercial and recreational mackerel fisheries. The revised mackerel regulations require the specification of ACTs for both the commercial and recreational mackerel fisheries. For butterfish, the regulations also require specification of the mortality cap on the longfin squid fishery.

The regulations governing specifications for Illex and longfin squid are largely unchanged from previous fishing years. For both squid species, regulations at § 648.22 require the specification of ABC, initial optimum yield (IOY), DAH, and DAP.

The Mid-Atlantic Research Set-Aside (RSA) Program allows research projects to be funded through the sale of fish that has been set aside from the total annual quota. The RSA may vary between 0 and 3 percent of the overall quota for each species. The Council has recommended that up to 3 percent of the total ACL for mackerel and butterfish, and up to 3 percent of the IOY for Illex and longfin squid, may be set aside to fund projects selected under the 2012 Mid-Atlantic RSA. NMFS awarded portions of available butterfish and longfin squid

RSA to support several projects; there were no RSA awards of mackerel and Illex. The award amounts are included in the specification descriptions for butterfish and longfin squid below. Descriptions of the selected projects were published in the proposed rule (76 FR 66260) and are not repeated here.

Table 1. Final Specifications, in Metric Tons (mt), for Mackerel and Butterfish for the 2012 Fishing Year, and for Illex and Longfin Squid for the 2012-2014 Fishing Years.

Specifications	Mackerel	Butterfish	<u>Illex</u>	Longfin
OFL	Unknown	Unknown	Unknown	Unknown
ABC	43,781	1,811	24,000	23,400
ACL	43,781	1,811	N/A	N/A
Commercial ACT	34,907	1,630	N/A	N/A
Recreational ACT/RHL	2,443	N/A	N/A	N/A
IOY	N/A	N/A	22,915	22,220
DAH/DAP	33,821	485	22,915	22,220
JVP	0	N/A	N/A	N/A
TALFF	0	0	N/A	N/A
RSA	N/A	15	N/A	225

Final 2012 Specifications and Management Measures for Mackerel

This action specifies the mackerel U.S. ABC at 43,781 mt, based on the formula U.S. $ABC = T - C$. T, or total annual catch, is the yield associated with a fishing mortality rate (F) that is equal to the target fishing mortality rate. C is the estimated catch of mackerel in Canadian

waters (36,219 mt) for the 2012 fishing year. The Transboundary Resources Assessment Committee (TRAC) could not establish biomass reference points or a target F at its March 2010 mackerel stock status assessment, and recommended that total annual catches not exceed the average total landings (80,000 mt) from 2006-2008 until new information is available. Thus, 80,000 mt minus 36,219 mt results in the 2012 U.S. ABC of 43,781 mt. The ACL for the mackerel fishery is set equal to the U.S. ABC.

Consistent with MSB Amendment 11, this action allocates 6.2 percent of the ACL (2,714 mt) to the recreational mackerel fishery. The recreational ACT of 2,443 mt (90 percent of 2,714 mt) is reduced from the recreational allocation to account for low precision and time lag of recreational catch estimates, as well as lack of recreational discard estimates. The recreational ACT is equal to the Recreational Harvest Limit (RHL), which is the effective cap on recreational catch.

The commercial mackerel fishery is allocated 93.8 percent of the U.S. ABC (41,067 mt, the portion of the ACL that was not allocated to the recreational fishery). The commercial ACT of 34,907 mt (85 percent of 41,067) reduces the commercial allocation to address uncertainty in estimated 2012 Canadian landings, uncertainty in discard estimates, and possible misreporting. The commercial ACT is further reduced by a discard rate of 3.11 percent (mean plus one standard deviation of discards from 1999-2008), to arrive at a DAH of 33,821 mt. The DAH is the effective cap on commercial catch, as it has been in past specifications.

This action maintains joint venture processing (JVP) allocation at zero (the most recent allocation was 5,000 mt of JVP in 2004). In the past, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the ability to process the total amount of

mackerel that U.S. harvesters could land. However, for the past 8 years, the Council has recommended zero JVP because U.S. shoreside processing capacity for mackerel has expanded. The Council concluded that processing capacity was no longer a limiting factor relative to domestic production of mackerel.

While a surplus existed between ABC and the mackerel fleet's harvesting capacity for many years, that surplus has disappeared due to downward adjustments of the specifications in recent years. Based on analysis of the state of global mackerel markets and possible increases in U.S. production levels, the Council concluded that specifying a DAH/DAP resulting in zero TALFF will yield positive social and economic benefits to both U.S. harvesters and processors, and to the Nation. For these reasons, NMFS is specifying DAH at a level that can be fully harvested by the domestic fleet (33,821 mt). TALFF is therefore not specified in order to support the U.S. mackerel industry.

Finally, this action provides that the commercial fishery be closed at 95 percent of the DAH. The current closure threshold of 90 percent of the DAH was designed to accommodate misreporting in the commercial fishery, and the lack of a distinct allocation for the recreational fishery. A 95-percent closure threshold is considered sufficient to prevent overages, given that a recreational allocation is now required by the FMP.

Final 2012-2014 Specifications and Management Measures for Illex Squid and Longfin Squid Illex Squid

This action specifies the Illex ABC at 24,000 mt for the 2012-2014 fishing years, subject to annual review. The ABC is reduced by a discard rate of 4.52 percent (the mean plus one standard deviation of the most recent 10 years of observed discards) to account for discards of

Illex that result from the operation of commercial fisheries, which results in an IOY, DAH, and DAP of 22,915 mt for the 2012-2014 fishing years. The FMP does not authorize the specification of JVP and TALFF for the Illex fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Longfin Squid

This action specifies a longfin squid ABC of 23,400 mt for the 2012-2014 fishing years, subject to annual review. The ABC is reduced by a discard rate of 4.08 percent (mean plus one standard deviation of the most recent 10 years of observed discards) to account for discards of longfin squid that result from the operation of commercial fisheries, and 226 mt is set aside for RSA, resulting in an IOY, DAH, and DAP of 22,219 mt for the 2012-2014 fishing years. The FMP does not authorize the specification of JVP and TALFF for the longfin squid fishery because of the domestic industry's capacity to harvest and process the OY for this fishery.

Distribution of the Longfin DAH

As was done in all fishing years since 2007, the 2012-2014 longfin DAH is allocated into trimesters, according to percentages specified in the FMP, as follows:

Table 3. Trimester Allocation of Longfin Quota for 2012-2014

Trimester	Percent	Metric Tons
I (Jan-Apr)	43	9,555
II (May-Aug)	17	3,777
III (Sep-Dec)	40	8,888
Total	100	22,220

Longfin Squid Jigging Provision

This action will allow Longfin Squid/Butterfish moratorium permit holders to possess longfin squid in excess of the 2,500-lb (0.93-mt) possession limit during any closures of the

longfin squid fishery resulting from the butterfish mortality cap, provided that all trawl gear is stowed and not available for immediate use, in accordance with § 648.23(b). The butterfish mortality cap was designed to limit butterfish bycatch in the longfin squid trawl fishery, and jigging for squid is not expected to result in substantial butterfish bycatch.

Interim Final 2012 Specifications and Management Measures for Butterfish

Compared to 2011, the butterfish specifications in the proposed rule would have increased the butterfish ABC by 100 percent (to 3,622 mt), and would have resulted in a 117-percent increase in the butterfish DAH (1,087 mt), and a 70-percent increase in the butterfish mortality cap on the longfin squid fishery (2,445 mt). A public comment on the proposed rule submitted by the Herring Alliance, an environmental group that represents 42 Northeast Coast organizations concerned about the status of the Atlantic Coast's forage fish, accurately pointed out that the proposed increase to the butterfish ABC is prohibited by the Council's risk policy at § 648.21(d), which states: "If an overfishing level (OFL) cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified."

This provision only applies to species, such as butterfish, that are subject to the ACL/AM requirements implemented through the Council's Omnibus Amendment, and for which NMFS seeks to raise the ABC. Therefore the commenter's objections to the proposed butterfish ABC do not apply to the specification for mackerel, which does not reflect an increased ABC, nor does it apply to Illex or longfin squid, neither of which is subject ACL/AM requirements because they have life cycles of less than one year. In response to this comment, NMFS is implementing status quo specifications in an interim final rule, and will allow 30 days for public comments.

Accordingly, this action specifies the 2012 butterfish ABC and ACL at 1,811 mt, and the ACT at 1,630 mt (reduced 10-percent from ACL). Butterfish TALFF is only specified to address bycatch by foreign fleets targeting mackerel TALFF. Because there is no mackerel TALFF, butterfish TALFF is also set at zero. This action allocates just under 70 percent of the ACT to cover butterfish discards, and 15 mt of butterfish RSA to cover discards related to allocated longfin squid RSA, which results in a DAH/DAP for butterfish of 485 mt. The butterfish mortality cap on the longfin squid fishery is specified at 1,436 mt. These specifications are consistent with the regulatory structure implemented in the Council's Omnibus Amendment, and include the same ABC and mortality cap implemented for the 2011 fishing year.

Table 2. Trimester Allocation of Butterfish Mortality Cap on the Longfin Squid Fishery for 2012

Trimester	Percent	Metric Tons
I (Jan-Apr)	65	933.4
II (May-Aug)	3.3	47.4
III (Sep-Dec)	31.7	455.2
Total	100	1,436

While the proposed rule contained a provision to require a 3-inch (7.62 cm) minimum mesh size for vessels possessing 2,000 lb (907.2 kg) or more of butterfish in order to allow some portion of butterfish discards to be landed, the interim final rule instead maintains the status quo (3-inch (7.62 cm) minimum mesh required to possess 1,000 lb (453.6 kg) or more of butterfish).

Comments and Responses

NMFS received four comments on the proposed specifications: One on behalf of Seafreeze, Ltd.; one from the Garden State Seafood Association (GSSA); one from Lund's

Fisheries Incorporated (Lund's Fisheries); and one from the Herring Alliance. Several issues not relevant to the specifications were raised by various commenters; only the comments relevant to the proposed specifications are addressed below.

General

Comment 1: The Herring Alliance commented that NMFS should implement annual specifications, rather than 3-year specifications, for all stocks in the MSB fisheries until biological reference points can be determined.

Response: This action implements annual specifications for mackerel and butterfish, and 2012-2014 specifications for Illex squid and longfin squid. The FMP allows for specifications to be set for up to 3 years for any of the MSB species. The Council has not recommended 3-year specifications for any of the MSB species in previous years, but did so this year for Illex and longfin squid. Though OFLs are not available for either squid species, the SSC determined that the best available information on these fisheries suggests that maintaining catches at the recommended levels in future years should not have a negative impact on the stock. In addition, substantial new information is unlikely to be available for the squid species in the intervening years because neither squid species is on the assessment schedule for 2012, 2013 or 2014. Setting the squid specifications for 3 years streamlines the regulatory process because the Council will not need to take action in the event that the SSC's and Council's squid specifications recommendations remain the same for upcoming years, but in no way binds the Council to maintain the recommendations. Though specifications for the squid species are being implemented for 3 years, the SSC must still evaluate the performance of the squid specifications each year, and the Council may propose any necessary adjustments through annual

specifications.Mackerel

Comment 2: GSSA and Lund's Fisheries support the proposed U.S. ABC of 43,781 mt, but were disappointed that the process of setting the U.S. ABC does not provide a mechanism to increase the U.S. ABC if Canadian catches are smaller than predicted. Lund's Fisheries suggested that Canadian underages should be added to the U.S. ABC as an in-season adjustment.

Response: The addition of a mechanism to increase the U.S. ABC if Canadian catches are smaller than predicted represents a significant change to the commercial quota system for mackerel. This type of mechanism would have to be considered through the Council process in order to allow for full development and justification for the adjustment, economic and biological analysis, and public comment. If the Council were to consider such a mechanism in the future, it could only be implemented through a framework adjustment or an amendment to the FMP, rather than through the specifications process. This is because the regulations governing the specifications process do not allow for adjustments to the commercial quota system. The Council would therefore have to consider such a mechanism in a future action.

Comment 3: GSSA and Lund's Fisheries support the proposed recreational allocation, and the application of a 10-percent management buffer to this allocation, but believed that a discard rate should have been applied to the recreational allocation.

Response: As noted in the comment and in the proposed rule, reliable discard estimates for the recreational fishery are not available. From 2004-2010, the Marine Recreational Fisheries Statistical Survey (MRFSS) estimated that recreational landings averaged 900 mt, and that 9.2 percent of that mackerel was "released alive." Based on release mortality rates for other Mid-Atlantic species, the EA provides a conservative assumption that 30 percent of released

mackerel die. If the recreational ACT of 2,443 mt is fully attained, NMFS estimates that 247 mt of mackerel will be released, and 74 mt of that mackerel will die after release. A 10-percent buffer is more than three times the estimated potential dead discards. Given the past performance of the recreational fishery, and the 10 percent buffer, NMFS believes that the potential for discards is adequately accounted for. As improvements to recreational data collection continue to be implemented, the MSB Monitoring Committee will re-examine the recreational ACT and consider whether discards should be accounted for in an explicit deduction.

Comment 4: GSSA, Lund's Fisheries, and the Herring Alliance oppose the 15-percent uncertainty buffer between the commercial allocation (93.8 percent of ABC) and the commercial ACT, which was proposed to account for uncertainty in estimated 2012 Canadian landings, uncertainty in discard estimates, and possible misreporting. GSSA noted that it was unclear whether the buffer was applied due to scientific or management uncertainty. GSSA and Lund's Fisheries expressed their view that this buffer is unnecessary, given that neither the U.S. quota nor the projected Canadian landings have been exceeded in recent years. Lund's Fisheries suggested that the commercial ACT should have been set equal to the commercial ACL (zero buffer). Conversely, the Herring Alliance asserted that uncertainty in the status of the mackerel stock supports a buffer of 25 percent or greater.

Response: The buffer between ACL and ACT is intended to address management uncertainty, which is the ability of managers to constrain catch to a target and the uncertainty in quantifying the true catch. NMFS supported the Council's recommendation for a 15-percent buffer between the ACL and ACT because of the uncertainty surrounding expected Canadian

mackerel catch, which can vary significantly from year to year. When applied to past years, the method Council staff used to estimate 2012 Canadian catch sometimes underestimated Canadian catch by as much as 21,000 mt, and sometimes overestimated Canadian catch by as much as 25,000 mt. The additional buffer helps reduce the likelihood that a severe underestimate of Canadian catch will result in landings in excess of the stockwide ABC. The Herring Alliance suggested that a larger buffer was needed because of uncertainty in the status of the mackerel stock. Uncertainty in stock status is scientific uncertainty, which was addressed by the SSC during its deliberation regarding specification of the stockwide mackerel ABC. Given recent performance of the fishery, NMFS determined that a 15-percent buffer between the commercial ACL and ACT is appropriate to prevent overages of both the U.S. ABC, and to provide additional protection for the possible event that 2012 Canadian catch has been underestimated.

Butterfish

Comment 5: GSSA and Lund's Fisheries support the proposed specifications for butterfish.

Response: As noted in the preamble, NMFS cannot implement the proposed specifications because increasing the butterfish ABC violates the Council's risk policy. The status quo specifications are detailed above.

Comment 6: GSSA remains concerned that the ABC for butterfish is too low and does not consider the high recruitment possibilities for this stock. They expressed concern that continued low estimates may cause serious management problems for fisheries that incidentally catch butterfish.

Response: GSSA's concern appears to be in reference to the butterfish mortality cap on

the longfin squid fishery. Because the 2011 cap did not result in a closure of the longfin squid fishery during the 2011 fishing year, NMFS does not have reason to believe the status quo butterfly mortality cap will necessarily result in a closure of the longfin squid fishery due to the harvest of the mortality cap for the 2012 fishing year.

Comment 7: The Herring Alliance recommended that NMFS disapprove the butterfly specifications. It argued that the butterfly specifications violate National Standards 1 and 2 for because: Increases to the butterfly ABC will not ensure that overfishing does not occur; increases to the ABC for butterfly without an OFL or OFL proxy violates the regulations implementing the Council's Omnibus Amendment; the basis upon which the butterfly cap was increased is not supported by scientific analyses; and a 10-percent buffer between ABC and ACT is insufficient to account for management uncertainty for the butterfly fishery.

Response: The butterfly specifications have been adjusted to address the concern that the Council's original ABC recommendation violates the regulations implementing the Omnibus Amendment. This interim final rule implements the status quo ABC of 1,811 mt.

NMFS does not agree with the Herring Alliance's assertion that a 10-percent buffer between ABC and ACT is insufficient to account for management uncertainty in the butterfly fishery. Though management uncertainty is a concern for the butterfly fishery, the FMP has a number of mechanisms to mitigate uncertainties beyond the 10-percent buffer between ABC and ACT. The specifications include an explicit deduction to account for discards in other fisheries. In addition, the butterfly mortality cap, which will be in its second year of operation in 2012, is designed to cap butterfly catch in the longfin squid fishery—the single largest source of fishing mortality for the butterfly stock. The cap acts as an accountability measure to control butterfly

catch (landings and discards) in the longfin squid fishery, and can result in a closure of the longfin squid fishery if it is exceeded. Finally, NMFS also closes the directed butterfish fishery when 80 percent of the DAH has been attained. Though this level was exceeded in the 2010 and 2011 fishing years, the increased DAH should reduce the likelihood of an overage in the 2012 fishing year.

Comment 8: The Herring Alliance commented that the role of butterfish as forage should have been taken into account when setting specifications. It noted that marine predators switch prey depending on relative abundance and distribution of forage species. The Herring Alliance concluded that, because the status of stocks such as Atlantic herring, Atlantic mackerel, Atlantic menhaden, river herring and shad species may be compromised, precautionary protection may be warranted.

Response: The impact of natural mortality on the butterfish stock, which includes predation, is taken into account during the butterfish assessment process, and is addressed during the specification of the ABC. The assessment does not consider potential future changes in butterfish predation because information is not available on future trends in forage.

Comment 9: A scientist commented on behalf of Seafreeze, Ltd., without submitting any information, that NMFS did not use all available scientific information in the assessment, and therefore that butterfish specifications neither protect the species nor provide for sufficient fishing opportunity.

Response: The commenter did not provide any evidence that indicates that the butterfish assessment used to set these specifications does not constitute the best available scientific information.

Longfin and Illex Squid

Comment 10: GSSA and Lund's Fisheries support the proposed specifications for longfin squid and Illex squid for the 2012-2014 fishing years.

Response: NMFS is implementing the specifications as proposed.

Comment 11: Lund's Fisheries requested that the timing of the Illex gear exemption should include the month of October due to availability of the Illex resource that can occur during that month.

Response: This rulemaking only clarifies the regulatory text for the exemption. An extension of the exemption to include the month of October is a change to the regulations that would have to be considered by the Council in a future action such as a framework adjustment or an amendment to the FMP.

Comment 12: GSSA and Lund's Fisheries do not support the jigging exemption until language detailing trawl gear stowage can be developed.

Response: The gear stowage provisions that appear at § 648.23(b) define how trawl gear should be properly stowed below the deck, on-deck, or on-reel to show that it is not available for immediate use.

Comment 13: The Herring Alliance commented that NMFS should direct the Council to establish OY for Illex squid. They noted that the Council cannot appropriately adjust the Illex quota for economic, social, or ecological factors because it failed to identify OY.

Response: Previous iterations of the Atlantic mackerel, squid and butterfish FMP specify the framework for establishing OY for Illex. The maximum OY is set not to exceed the catch associated with a fishing mortality rate of F_{msy} . This is assessment driven, and a lower

amount may be set if warranted by the assessment. The regulations at § 648.22 contemplate that the ABC will be set annually at the maximum OY or a lower amount if the potential yield from the fishery is less than this level. Since maximum OY cannot be specified due to the lack of reference points for the fishery, an ABC of 24,000 mt was selected, since it is a level of yield that has been supported by the fishery since 2000. The regulations allow the ABC to be modified annually based upon economic and social factors. However, the Council modified the ABC simply by deducting estimated discards to arrive at the DAH of 22,915 mt. In essence, the OY for Illex, is the ABC, as modified by the deduction of discards to specify DAH and RSA.

RSA

Comment 14: GSSA and Lund's Fisheries support setting aside 3 percent of the mackerel and butterfish ACLs, and 3 percent of the longfin squid and Illex IOYs to fund research. They also support the three preliminarily approved projects, since the inshore information gathered in the projects should add to existing information about distribution of key commercial species.

Response: NFMS issues 497,527 lb (225 mt) of longfin squid and 33,069 lb (15 mt) of butterfish for the RSA proposals detailed in the proposed rule.

Changes from the Proposed Rule

There are no changes from the proposed rule to the mackerel, longfin squid, or Illex squid specifications or management measures. Instead of the butterfish specifications and management measures put forward in the proposed rule, this interim final rule implements status quo butterfish specifications and management measures.

Classification

The Administrator, Northeast Region, NMFS, determined that these specifications are necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fisheries and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Council prepared an EA for the 2012 specifications, and the NOAA Assistant Administrator for Fisheries concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available upon request (see ADDRESSES).

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA, included in the preamble of this final rule, in support of the 2012 specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summaries in the IRFA, a summary of the significant issues raised by the public in response to the IRFA, and NMFS's responses to those comments. A copy of the IRFA, the RIR, and the EA are available upon request (see ADDRESSES).

Statement of Need for this Action

This action implements 2012 specifications for mackerel and butterfish, and 2012-2014 specifications for Illex and longfin squid. It also modifies the closure threshold for the commercial mackerel fishery, adjusts the gear requirements for the butterfish fishery, and allows

for the use of jigs to capture longfin squid, should the longfin squid fishery be closed due to reaching the butterfly mortality cap. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to the proposed and final rules and are not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

There were no issues related to the IRFA raised in public comments.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Based on permit data for 2011, the numbers of potential fishing vessels in the 2012 fisheries are as follows: 351 longfin squid/butterfish moratorium permits; 76 *Illex* moratorium permits; 2,201 mackerel permits; 1,904 incidental squid/butterfish permits; and 831 MSB party/charter permits. Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to \$4.0 and \$6.5 million, respectively. There are no large entities participating in this fishery, as that term is defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, there are no Federal rules that duplicate, overlap, or conflict with this final rule.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impacts on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Actions Implemented With the Final Rule

The recently finalized Omnibus Amendment, which applies to mackerel and butterfish, changes the structure of specifications compared to that used in past years. In order to facilitate comparison of alternatives, the discussions of mackerel and butterfish specifications below will focus on the effective limit on directed harvest, regardless of the terminology used for the specification. The specifications and terminology for Illex and longfin squid are unchanged from those used in 2011.

The mackerel commercial DAH specified in this action (33,821 mt) represents a reduction from status quo (2011 DAH = 46,779 mt). Despite the reduction, the DAH is above recent U.S. landings; mackerel landings for 2008-2010 averaged 18,830 mt. Thus, the reduction does not pose a constraint to vessels relative to the landings in recent years. In 2011, there was a soft allocation of 15,000 mt of the mackerel DAH for the recreational mackerel fishery. The Omnibus Amendment and MSB Amendment 11 requires NMFS to establish an explicit allocation for the recreational fishery, and this action specifies a Recreational ACT/RHL of 2,443 mt. Because recreational harvest from 2008-2010 averaged 738 mt, it does not appear that the new, explicit allocation for the recreational fishery will constrain recreational harvest. Overall, this action is not expected to result in any reductions in revenues for vessels that

participate in either the commercial or recreational mackerel fisheries.

The adjustment to the mackerel closure threshold, which requires the closure of the commercial mackerel fishery at 95 percent of the DAH, is a preventative measure intended to ensure that the commercial catch limit is not exceeded. The economic burden on fishery participants associated with this measure is expected to be negligible.

The butterfish DAH specified in this action (500 mt) is the same as status quo. The DAH has been fully attained during the 2010 and 2011 fishing years.

The Illex IOY (22,915 mt) specified in this action represents a slight decrease compared to status quo (23,328 mt). Though annual Illex landings have totaled over 2/3 of the IOY in the past 3 years (15,900 mt for 2008, 18,419 mt for 2009, and 15,825 for 2010), the landings were lower than the level being proposed. Thus, implementing this action should not result in a reduction in revenue or a constraint on expansion of the fishery in 2012.

The longfin squid IOY (22,445 mt) represents an increase from the status quo (20,000 mt). Because longfin squid landings from 2008-2010 averaged 9,182 mt, the specified IOY provides an opportunity to increase landings, though if recent trends of low landings continue, there may be no increase in landings despite the increase in the allocation. No reductions in revenues for the longfin squid fishery are expected as a result of this proposed action.

As discussed in the FRFA for MSB Amendment 10, the butterfish mortality cap has a potential for economic impact on fishery participants. The longfin squid fishery will close during Trimesters I and III if the butterfish mortality cap is reached. If the longfin squid fishery is closed in response to butterfish catch before the entire longfin squid quota is harvested, then a loss in revenue is possible. The potential for longfin squid revenue loss depends upon the size of

the butterfish mortality cap. This interim final rule maintains the 2012 butterfish mortality cap at the level that was specified for 2011 (1,436 mt). The 2011 butterfish mortality cap did not result in a closure of the longfin squid fishery in Trimester I. At the end of Trimester III, just over 40 percent of the butterfish mortality cap was left unharvested, and the cap did not result in a closure of the longfin squid fishery during the 2011 fishing year. Given that the status quo cap did not constrain the longfin squid fishery in 2011, additional revenue losses are not expected as a result of this interim final action.

The jigging measure will allow Longfin Squid/Butterfish moratorium permit holders to possess longfin squid in excess of the possession limit during any closures of the longfin squid fishery resulting from the butterfish mortality cap. Jigging for longfin squid has been shown to be commercially infeasible. However, because butterfish bycatch in jig gear is expected to be very minimal, it seems reasonable to allow jig fishing for squid. If attempts to use jig gear for commercial longfin squid fishing are successful, the use of this gear could help mitigate economic impacts on fishery participants if the longfin squid fishery is closed due to reaching the mortality cap.

Alternatives to the Actions in the Final Rule for Mackerel, Longfin Squid, and Illex Squid

The Council analysis evaluated four alternatives to the specifications for mackerel. The first (status quo) and second non-selected alternatives were based on the specifications structure that existed prior to the implementation of the Omnibus Amendment, and were not selected because they no longer comply with the MSB FMP. The other alternatives differed in their specification of the stockwide ABC (80,000 mt in the preferred alternative). The same amount of expected Canadian catch (36,219 mt) was subtracted from the stockwide ABC in each

alternative. The third alternative (least restrictive) would have set the U.S. ABC and ACL at 63,781 mt (100,000 mt stockwide ABC minus 36,219 mt Canadian catch), the Commercial ACT at 50,853 mt, the DAH and DAP at 49,271 mt, and the Recreational ACT at 3,559 mt. The fourth alternative (most restrictive) would have set the U.S. ABC and ACL at 23,781 mt (60,000 mt stockwide ABC minus 36,219 mt Canadian catch), the Commercial ACT at 18,961 mt, the DAH and DAP at 18,371 mt, and the Recreational ACT at 1,327 mt. These two alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

The status quo closure threshold for the commercial mackerel fishery (90 percent) was considered overly precautionary when compared to the selected closure threshold (95 percent). The status quo closure threshold, which was designed in part because there was no distinct allocation for the recreational mackerel fishery, is no longer considered appropriate.

Three alternatives to the preferred action were considered for Illex, but were not selected by the Council. All alternatives would have established specifications for the 2012-2014 fishing years. The first alternative (status quo), shared the same 24,000-mt ABC as the proposed action. However, a discard rate of 2.8 percent was deducted to reach an IOY, DAH, and DAP at 23,328 mt rather than the 22,915 mt specified in this proposed action. The Council did not select the status quo alternative because it found the updated discard rate of 4.52 percent to be a more appropriate representation of discards in the Illex fishery. The second alternative (least restrictive) would have set ABC at 30,000 mt, and IOY, DAH, and DAP at 28,644 mt (ABC reduced by 4.52 percent for discards). This alternative was not selected because the higher specifications were inconsistent with the results of the most recent stock assessment. The third alternative (most restrictive) would have set ABC at 18,000 mt, and IOY, DAH, and DAP at

17,186 mt (ABC reduced by 4.52 percent for discards). The Council considered this alternative unnecessarily restrictive.

There were three alternatives to the selected action evaluated for longfin squid. All alternatives would have established specifications for the 2012-2014 fishing years. The first alternative (status quo) would have set the ABC at 24,000 mt, and the IOY, DAH and DAP at 20,000 mt. The second alternative (least restrictive) would have set the ABC at 29,250 mt, and the IOY, DAH, and DAP at 28,057 mt (ABC reduced by 4.08 percent for discards). The third alternative (most restrictive) would have set the ABC at 17,550 mt, and the IOY, DAH and DAP at 16,834 mt (ABC reduced by 4.08 percent for discards). These three alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

The alternatives for longfin squid RSA would have allowed up to 1.65 percent (status quo) or up to 3 percent (preferred) of the longfin squid IOY to be used to fund research projects for the 2012-2014 fishing years. In 2011, butterflyfish RSA was only awarded to cover butterflyfish discards by vessels fishing for longfin squid RSA. The small amount of butterflyfish RSA available in 2011 (15 mt, or 3 percent of 500 mt butterflyfish DAH) was only sufficient to cover discards for an amount of longfin squid RSA equal to 1.65 percent of the IOY. The recommended increase in the 2012 butterflyfish quota will allow for enough butterflyfish RSA (3 percent of the 1,087 mt butterflyfish DAH) to accommodate discards for longfin squid RSA equal to 3 percent of the IOY. For the jigging exemption, the status quo alternative prevents Longfin squid/Butterflyfish moratorium permit holders from possessing or landing over 2,500 lb (1.13 mt) of longfin squid if the directed fishery is closed because of the butterflyfish mortality cap. The preferred alternative would allow such vessel to possess and land over 2,500 lb (1.13 mt) if using jigging gear. If the use of jigs for commercial longfin squid fishery proves successful, the

preferred alternative may help reduce the economic impacts of closures of the longfin squid fishery resulting from the butterflyfish mortality cap.

Alternatives to the Actions in the Interim Final Rule for Butterflyfish

There were six alternatives to the preferred action for butterflyfish that were not selected. The first (status quo) and second non-selected were based on the specifications structure that existed prior to the implementation of the Omnibus Amendment, and were not selected because they no longer comply with the MSB FMP. The third alternative (Council preferred) would have set ABC and ACL at 3,622 mt, the ACT at 3,260 mt, the DAH and DAP at 1,087 mt, and the butterflyfish mortality cap at 2,445 mt. The fourth alternative (least restrictive) would have set the ABC and ACL at 4,528 mt, the ACT at 4,075 mt, the DAH and DAP at 1,358 mt, and the butterflyfish mortality cap at 3,056 mt. The fourth alternative would have set the ABC and ACL at 2,717 mt, the ACT at 2,445 mt, the DAH and DAP at 815 mt, and the butterflyfish mortality cap at 1,834 mt. These three alternatives were not selected because they would increase the butterflyfish ABC, which is prohibited by the Council's risk policy. The final non-selected alternative would have set ABC and ACL at 1,811 mt, the ACT at 1,630 mt, the DAH and DAP at 543 mt, and the butterflyfish mortality cap at 1,222 mt. This alternative was not selected because it is inconsistent with status quo.

There were two alternatives regarding the adjustment to the butterflyfish gear requirement. The status quo alternative (preferred) requires vessels possessing 1,000 lb (0.45 mt) or more of butterflyfish to fish with a 3-inch (76-mm) minimum codend mesh. The alternative in the proposed rule (3-inch (76-mm) mesh to possess 2,000 lb (0.9 mt)) could create some additional revenue in the form of butterflyfish landings for vessels using mesh sizes smaller than 3 inches (76 mm). The higher possession limit was contemplated in light of the proposed increases to the butterflyfish

specifications, and is no longer appropriate if the status quo butterfish specifications are implemented.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 13, 2012

Alan D. Risenhoover,

Acting Deputy Assistant Administrator

For Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.2, remove the definition for “Loligo,” revise the definition of “Squid,” and add the definition for “Longfin squid” in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Longfin squid means Doryteuthis (Amerigo) pealeii (formerly Loligo pealeii).

* * * * *

Squid means longfin squid (Doryteuthis (Amerigo) pealeii, formerly Loligo pealeii) or Illex illecebrosus.

* * * * *

3. In § 648.23, paragraph (a) is revised to read as follows:

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) Mesh restrictions and exemptions. Vessels subject to the mesh restrictions in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that specified in paragraphs (a)(1) and (a)(2) of this section.

(1) Butterfish fishery. Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(2) Longfin squid fishery. Owners or operators of otter trawl vessels possessing longfin squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2 1/8 inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1 7/8 inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) Net obstruction or constriction. Owners or operators of otter trawl vessels fishing for

and/or possessing longfin squid shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 2 1/8 inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1 7/8 inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure. “Top of the regulated portion of the net” means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing longfin squid may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 5 inches (12.7 cm) diamond mesh, inside stretch measure. For the purposes of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) Jigging exemption. During closures of the longfin squid fishery resulting from the butterfish mortality cap, described in § 648.26(c)(3), vessels fishing for longfin squid using jigging gear are exempt from the closure possession limit specified in § 648.26(b), provided that all otter trawl gear is stowed as specified in paragraph (b) of this section.

(3) Illex fishery. Seaward of the following coordinates, otter trawl vessels possessing longfin squid harvested in or from the EEZ and fishing for Illex during the months of June, July, August, in Trimester II, and September in Trimester III are exempt from the longfin squid gear requirements specified in paragraph (a)(2) of this section, provided that landward of the specified coordinates they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1 7/8 inches (48 mm) diamond mesh in Trimester II, and 2 1/8 inches (54 mm) diamond mesh in Trimester III, or any piece of

net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(2) of this section.

Point	N. Lat.	W. Long.
M1	43°58.0'	67°22.0'
M2	43°50.0'	68°35.0'
M3	43°30.0'	69°40.0'
M4	43°20.0'	70°00.0'
M5	42°45.0'	70°10.0'
M6	42°13.0'	69°55.0'
M7	41°00.0'	69°00.0'
M8	41°45.0'	68°15.0'
M9	42°10.0'	67°10.0'
M10	41°18.6'	66°24.8'
M11	40°55.5'	66°38.0'
M12	40°45.5'	68°00.0'
M13	40°37.0'	68°00.0'
M14	40°30.0'	69°00.0'
M15	40°22.7'	69°00.0'
M16	40°18.7'	69°40.0'
M17	40°21.0'	71°03.0'
M18	39°41.0'	72°32.0'
M19	38°47.0'	73°11.0'
M20	38°04.0'	74°06.0'
M21	37°08.0'	74°46.0'
M22	36°00.0'	74°52.0'
M23	35°45.0'	74°53.0'
M24	35°28.0'	74°52.0'

* * * * *

4. In § 648.24, paragraph (b)(1) is revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) Mackerel commercial sector EEZ closure. NMFS shall close the commercial mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that the DAH for mackerel will be landed, NMFS shall close the commercial mackerel fishery in the EEZ, and the incidental catches specified for mackerel in § 648.26 will be prohibited.

* * * * *

§§ 648.4, 648.13, 648.14, 648.22, 648.24, 648.26, 648.27, and 648.124 [Amended]

5. In the table below, for each section in the left column, remove the text from whenever it appears throughout the section and add the text indicated in the right column.

Section	Remove	Add	Frequency
§ 648.4(a)(5)(i)	<u>Loligo</u>	longfin	1
§ 648.4(a)(5)(i)(A)	<u>Loligo</u>	longfin	2
§ 648.4(a)(5)(i)(L)(ii)	<u>Loligo</u>	longfin	1
§ 648.4(a)(10)(iv)(C)(<u>i</u>)	<u>Loligo</u>	longfin	1
§ 648.4(a)(10)(iv)(C)(<u>i</u>) (<u>ii</u>)	<u>Loligo</u>	longfin	1
§ 648.13(a)	<u>Loligo</u>	longfin squid	2

§ 648.14(g)(1)(ii)(B)	<u>Loligo</u>	longfin squid	2
§ 648.14(g)(2)(ii)	<u>Loligo</u>	longfin	2
§ 648.14(g)(2)(iii)(A)	<u>Loligo</u>	longfin squid	1
§ 648.14(o)(1)(vi)	<u>Loligo</u>	longfin	1
§ 648.22(a)(2)	<u>Loligo</u>	longfin squid	1
§ 648.22(a)(4)	<u>Loligo</u>	longfin	1
§ 648.22(a)(5)	<u>Loligo</u>	longfin	1
§ 648.22(b)(1)	<u>Loligo</u>	longfin	1
§ 648.22(b)(1)(i)(A)	<u>Loligo</u>	longfin squid	1
§ 648.22(b)(3)(v)	<u>Loligo</u>	longfin squid	1
§ 648.22(c)(1)(i)	<u>Loligo</u>	longfin squid	1
§ 648.22(f)	<u>Loligo</u>	longfin	1
§ 648.22(f)(1)	<u>Loligo</u>	longfin	1
§ 648.24(a)	<u>Loligo</u>	longfin squid	4
§ 648.24(c)(3)	<u>Loligo</u>	longfin squid	2
§ 648.26(b)	<u>Loligo</u>	longfin squid	7
§ 648.27 (section heading)	<u>Loligo</u>	longfin squid	1
§ 648.27(a)	<u>Loligo</u>	longfin squid	1
§ 648.27(b)	<u>Loligo</u>	longfin squid	5
§ 648.27(c)	<u>Loligo</u>	longfin squid	3
§ 648.27(d)	<u>Loligo</u>	longfin squid	2
§ 648.124(a)(2)	<u>Loligo</u>	longfin	1

§ 648.124(b)(2)

Loligo

longfin

1

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